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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/712,887
Filing Date: November 15, 2000
Appellant(s): WEBER ET AL.

Joel M. Fogelson 43,613
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 05/08/2008 appealing from the Office action mailed 08/31/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,778,187	MONTEIRO ET AL	7-1998
6,411,992	SRINIVASAN ET AL	6-2002
5,734,589	KOSTRESKI ET AL	3-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 4-14, 16, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,778,187 by Monteiro et al. (Monteiro) in view of U.S. Patent 6,411,992 by Srinivasan et al. (Srinivasan).

With respect to claim 13, Monteiro teaches a system for processing broadcast multimedia program content and advertisements to provide a composite program datastream having multimedia data content and user targeted advertisements to multiple different users (Col. 1 lines 5-15), comprising:

a processor operable to concurrently receive broadcast multimedia program content from multiple sources (Col. 4 lines 18-32), said broadcast multimedia program content comprises at least one of (a) streamed audio data, (b) streamed video data, (c) voice representative data, (d) voicemail data, and (e) a radio or video broadcast (Col. 4 lines 18-32 of Monteiro);

a scheduler operable to schedule time of insertion of a designated advertisement into selected broadcast multimedia program content (Col. 4 lines 32-35Col. 16 lines 29-40), said scheduler being configured to receive and pre-cache advertisements from multiple sources to provide candidate advertisements for selection of said designated advertisement for insertion in said selected multimedia program content at a scheduled insertion time (Col. 4 lines 31-54 and Col. 1 lines 11-15 of Monteiro: Candidate paid commercial advertising are pre-cached at playback/control workstations. Being akin to TV and radio indicates multiple sources); and

a multiplexer operable to provide multiple users with individualized composite program datastreams by performing in parallel for multiple users: insertion of a designated advertisement into a selected multimedia program content at a scheduled insertion time to form a composite program datastream (Col. 7 lines 60-65, *Interpreted to mean insertion may occur at the Media Server*); and coupling of said composite program datastream to a corresponding user of the multiple users (Col. 5 line 65 – Col. 6 line 5).

Monteiro does not explicitly disclose the processor determining authorization of the multiple broadcast sources. Srinivasan teaches a similar system for broadcasting content with scheduled advertisement insertion (See abstract). The content to be broadcast is received from multiple sources at the broadcast server (Col. 4 lines 43-51). The broadcast system requires authorization in order to access the broadcast server, such authorization coming through the use of a transmitted ID (Col. 5 lines 40-46).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the authorization technique as taught by Srinivasan, to improve the broadcast system of Monteiro for the predictable result of requiring authorization to access the broadcast server.

With respect to claim 14, Monteiro further teaches additionally comprising a conditional access processor to determine the authorization of multiple broadcast sources and, said conditional access processor determines authorization of a broadcast source to provide broadcast multimedia program content based a broadcaster ID which is transmitted by a broadcast source (In Srinivasan: Col. 4 lines 40-46).

With respect to Claim 16, Monteiro further teaches said multiplexer repeats said composite program datastream by mapping stored data comprising said composite program datastream to provide multiple stored copies of said composite program datastream for coupling to multiple users to enable scaleable expansion of broadcast of said composite program datastream (Col. 5 line 65 – Col. 6 line 5 and Col. 3 lines 55-59 of Monteiro).

With respect to claim 26, Monteiro further teaches wherein said conditional access processor permits said broadcast source to be broadcasted to said multiple users by decrypting a program stream from said broadcaster for broadcast (In Monteiro: Col. 4 lines 25-29) and prevents said program stream from being broadcasted to said multiple users in view of a validation routine that considers the time of a broadcast (In Srinivasan: Col. 6 lines 5-8, programs include a start and end time).

With respect to claim 4, Monteiro further teaches said scheduler schedules insertion of said designated advertisement into said multimedia program content based on at least one of (a) scheduling information provided by a broadcast source of said selected broadcast multimedia program, and (b) scheduling information provided by a source of said designated advertisement (In Srinivasan: Col. 8 lines 9-30).

With respect to claim 5, Monteiro further teaches wherein said scheduling information contains advertisement scheduling information covering multiple broadcast multimedia programs (In Srinivasan: Col. 7 line 46- Col. 8 line 30).

With respect to claim 6, Monteiro further teaches wherein said scheduling information provided by a broadcast source comprises at least one of (a) information indicating time slots available for advertisement insertion in said broadcast multimedia program, (b) markers in said selected broadcast multimedia program indicating an advertisement insertion time slot, and (c) information for identifying advertisement insertion time slots from time stamp indications (In Srinivasan: Col. 7 line 46- Col. 8 line 30)

With respect to Claim 7, Monteiro further teaches said multiplexer repeats said composite program datastream by mapping stored data comprising said composite program datastream to provide multiple stored copies of said composite program datastream for coupling to multiple users to enable scaleable expansion of broadcast of said composite program datastream (Col. 5 line 65 – Col. 6 line 5 and Col. 3 lines 55-59 of Monteiro).

With respect to Claim 8, Monteiro further teaches said multiplexer tracks a user connection (Col. 8 lines 4-11 and Fig. 5 of Monteiro) and maintains a database of user connection related statistics (Col. 3 lines 39-54 of Monteiro) comprising at least one of (a) user favorite program sources (Col. 3 lines 50-54 of Monteiro), (b) number of advertisements broadcast (See Claim 5 and 6 of Monteiro), (c) number of users receiving said composite program datastream (Col. 3 lines 42-44 of Monteiro), and (d) length of user connection to a particular composite program datastream (Col. 3 lines 50-54 of Monteiro).

With respect to claim 9, Monteiro further teaches said multiplexer dynamically reallocates advertisements targeted to a user during broadcast of said composite program datastream in response to a command by selecting an advertisement from a plurality of available advertisements of duration suitable for a time slot at said scheduled insertion time (In Srinivasan: Col. 9 lines 11-47).

With respect to claim 10, Monteiro further teaches wherein: a locally sourced advertisement is selected for said time slot in preference to a non-locally sourced advertisement (In Srinivasan: Col. 9 lines 11-47 - demographic based advertisement includes selection based on location).

With respect to Claim 11, Monteiro further teaches an error processor operable to parse said composite program datastream to detect error, and including an error concealment function operable to reduce the consequences of a detected error (Col. 7 lines 12-31 of Monteiro).

With respect to Claim 12, Monteiro further teaches a user profile database operable to allocate one of a plurality of available different advertisements for delivery to an individual user based on previously compiled user preference data in said user profile database (Col. 16 lines 34-41 of Monteiro); and a data acquisition processor operable to compile user preference information used in said user profile database based on prior user program selection history (Col. 16 lines 34-41 of Monteiro).

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Monoteiro in view of Srinivasan and in further view of U.S. Patent 5,734,589 by Kostreski et al. (Kostreski).

With respect to Claim 15, Monteiro does not explicitly disclose said conditional access processor includes a decryption function to decrypt at least one of (a) encrypted broadcast multimedia program content, and (b) an encrypted authorization code or password. Kostreski teaches said conditional access processor includes a decryption function to decrypt at least one of (a) encrypted broadcast multimedia program content, and (b) an encrypted authorization code or password (In Kostreski: Col. 21 lines 8-16 and Col. 25 lines 50-60).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the system disclosed by Monteiro in view if Srinivasan and modify it as indicated by Kostreski such that the system further comprises Kostreski teaches said conditional access processor includes a decryption function to decrypt at least one of (a) encrypted broadcast multimedia program content, and (b) an encrypted

authorization code or password. One would be motivated to have this, as there is need for providing the advantages of the system to authorized broadcast sources for the benefit of those using the system (In Kostreski: Col. 26 lines 39-46 and Col. 3 lines 54-58).

(10) Response to Argument

Argument A - Pre-caching:

On page 7 of the brief, appellant argues pre-caching limitations of claim 13. Particularly, appellant states,

" While the advertisements do need to be stored in some fashion prior to insertion, the Network Control Center is focused on caching during preparation of the content stream rather than pre-caching, i.e., caching prior to arrival of the content stream. The real-time insertion of advertisements taught by Monteiro is a mechanism that claim 13 avoids with pre-caching so that the significant delays of real- time insertion can be alleviated. The predictive staging accomplished by claim 13 allows the advertisements to be received before the content so that the advertising can be combined with the content as soon as the content arrives without delays. With respect to the User computer of Monteiro, the User computer allows for pre- caching of content, but does not have a scheduler or multiplexer as recited in claim 13."

Examiner's Response to Argument A:

The claim language at issue is "*said scheduler being configured to receiving and pre-cache advertisements from multiple sources to provide candidate advertisements for selection of said designated advertisement for insertion in said selected multimedia program content at a scheduled insertion time*."

The examiner does not see how storing advertisements in some fashion prior to insertion is not pre-caching. The claims do not indicate that "pre-caching" is necessarily caching prior to arrival of the content stream. Pre-caching can also be interpreted as merely caching prior to the insertion of the advertisement. Caching is typical done as a post operation, such that subsequent needs for the cached item will be met more quickly as the cached item is readily available. As such, pre-caching, as interpreted by the examiner, is merely having the information available before the corresponding operation. In this case, the cached information item is the advertisements and the operation is the insertion of the advertisements. Therefore, having the advertisements available before the insertion of the advertisement can be considered 'pre-caching'. The examiner interprets Monteiro as teaching such based on Col. 4, lines 32-35, primarily, and appellant further acknowledges this stating that "*advertisements do need to be stored in some fashion prior to insertion*".

The examiner further notes that the claims do not indicate any predictive staging subject matter. The claims only require pre-caching of candidate advertisements. Candidate advertisements can be simply interpreted as any advertisement from a pool of advertisements. The examiner considers this to be the case in Montiero, where the Playback/Control Workstation has a pool of paid commercial advertisements to select from for insertion into the stream to form an integrated media stream (Col. 4 lines 32-35).

Argument B - Scheduler:

On pages 7-8 of the brief, appellant argues scheduler limitations of claim 13. Particularly, appellant particularly states,

"*With respect to independent claim 13, the Examiner also states that Monteiro teaches a scheduler at col. 4, lines 32-35 and col. 16, lines 29-40. With respect to col. 4, lines 32-25, there is simply no mention of any type of scheduler. On the contrary, this section of Monteiro mentions the real-time insertion of advertising at the Playback/Control Workstation. If the advertising is inserted in real-time, there is no need for a scheduler. The advertisement is obtained, stored temporarily, possibly changed quickly, and inserted as soon as possible into the content so that the insertion is done in real-time. A schedule is simply pointless in this context. Therefore this section of Monteiro actually teaches away from the scheduler recitation of claim 13.*"

Examiner's response to argument B:

The claim language indicates that a scheduler is "*operable to schedule time of insertion of a designated advertisement into selected broadcast multimedia program content*". Appellants arguments indicate that since the insertion is real-time, there is no need for a scheduler. The examiner notes that "real-**time**" and the media stream are still **time** oriented and doesn't negate the use of a scheduler. The insertion functionality of Monteiro (Col. 4 lines 32-35) does not insert advertisements into a content stream at random times. There is clearly a mechanism within the Playback/Control workstation of Monteiro that indicates the proper time to insert an advertisement. The examiner considers this to be within the scope of the claimed subject matter, particularly as there are no specific subject matter claimed in relation to how the scheduling is done.

Remaining arguments:

Any remaining arguments rely on reasoning disclosed above and are therefore responded to based on the examiner responses above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/David Lazaro/

Conferees:

/saleh najjar/

Supervisory Patent Examiner, Art Unit 2155

/Ario Etienne/

Supervisory Patent Examiner, Art Unit 2157